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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,734	07/19/2002	Torsten Baier	449122023000	4552
25227	7590	01/21/2004	EXAMINER	
MORRISON & FOERSTER LLP 1650 TYSONS BOULEVARD SUITE 300 MCLEAN, VA 22102			JULES, FRANTZ F	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/088,734

Applicant(s)

BAIER, TORSTEN

Examiner

Frantz F. Jules

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-13 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

1. The disclosure is objected to because of the following informalities:

On page 5, line 22 of the specification, the word "minimumspeed" should be changed to --minimum speed--.

On page 5, line 22 of the specification, the word "Inorder" should be changed to --In order--.

Appropriate correction is required.

### ***Claim Objections***

2. Claims 1-6, 12-13 are objected to because of the following informalities:

In claim 1, line 15, the phrase "is driven by it" should be replaced by --is driven by the control unit—or an equivalent term to improve the quality of the claim language.

In claim 1, line 21, the phrase "in which it stores" should be replaced by --which stores— or an equivalent term.

Appropriate correction is required.

Claims 2-6, 12-13 are objected as being dependent upon objected claim 1.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 6-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 6, line 4-6, the phrase "a predetermined minimum speed which, if undershot, would resulting the rail vehicle being braked in accordance with the predetermined braking profile in the phase when it is approaching the next stop without being driven" is confusing as it is unclear what applicant is referring to by if undershot. Similar problem exists in claim 11.

Claim 7 recites the limitation "the actual drive switching-off time" in line 17. There is insufficient antecedent basis for this limitation in the claim as no precedence has been established for this limitation and this time is different than the recommended drive switch-off time.

In claim 7, line 11, the phrase "a determined distance" is confusing as it is unclear how it relates to previously recited determined distance above in step 1.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-4, and 7-9, 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Admitted Info (spec. page 1, lines 29-36, page 2, lines 1-29 or US 5,239,472) in view of Schmidt (German Patent 1,237,612).

Claims 1-4, 7-9

The Admitted info discloses a device for a rail vehicle having a control unit, which determines the distance between the rail vehicle and the respective intended next stop

using a measured location measured value, which indicates the location of the rail vehicle, and predetermined, stored route data, determines the remaining traveling time to the next stop using a measured time measured value, which indicates the respective time, and a predetermined, stored timetable, and forms a recommended drive switching-off time taking account of the determined distance, of the determined remaining traveling time, of a speed measured value which indicates the speed of the rail vehicle, and predetermined coasting data, which describes the coasting behavior of the rail vehicle when the drive is switched off, from which drive switching-off time the rail vehicle will reach the intended next stop on time in accordance with the respective timetable without being driven, and having an output device which is connected to the control unit and is driven by it, and which produces a switching-off signal which indicates the recommended drive switching-off time.

The Admitted info discloses all of the features as listed above but does not disclose a Method or device for producing a switching-off signal for a rail vehicle in which the step of providing a data input at which an actual value signal which indicates the actual drive switching-off time can be entered in the device and including a memory in which stores the actual drive switching-off time and the respectively associated, recommended drive switching-off time, for computing a time difference value for producing a warning signal if the time difference value exceeds a predetermined threshold value is included. The general concept of manually providing a data input parameter and comparing an actual parameter to a predetermined parameter in a method for switching off the starting current in an electric rail vehicle is well known in the art as illustrated by the German patent

which disclose on page 5, lines 10-24, and lines 31-33, the teaching of manually providing a switching signal to a rail vehicle and comparing automatically the actual departure time and the deviation between the actual time and the predetermined time which are transmitted and stored for comparison with a plurality of deviations and current switch off times and the switch off instruction or difference is transmitted to the travel controller by the program unit at the switch-off time corresponding to the deviation by the action of the memory responding to the present deviation. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify The Admitted information to include the method step of manually providing a data input value signal which indicates the actual drive switching-off time in the device and including a memory in which stores the actual drive switching-off time and the respectively associated, recommended drive switching-off time, for computing a time difference value for producing a warning signal if the time difference value exceeds a predetermined threshold value in his advantageous drive switching –off device as taught by the German patent'612 in order to reduce the risk of failure of dive switching-off in the event of malfunctioning of the system, improve on the accuracy of the drive switching-off time.

***Allowable Subject Matter***

7. Claims 5-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 10-11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

7. Applicant's arguments filed 11/24/03 have been fully considered but they are moot in view of the allowance of claims 5-6, and 10-11.

Applicant's argument that the Schmidt reference fails to disclose switching-off of the current by an operator as Schmidt discloses switching-off of current based on departure time difference which is done automatically is weak as Schmidt also discloses manually supplying a switching signal to a rail vehicle. Schmidt also discloses the teaching of comparing an actual parameter value to a predetermined parameter value in a rail vehicle and the difference is used to produce switching-off time of the rail vehicle.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Kondo et al, Roehl, Maisch, White et al, Kono et al, and Kobayashi et al are cited to show related method for producing switching-off signal including signal input device and data comparison.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-8780. The examiner can normally be reached on Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Frantz F. Jules  
Examiner  
Art Unit 3617

FFJ

January 15, 2004

**FRANTZ F. JULES**  
**PATENT EXAMINER**  
